

**CHIROPRACTIC EXAMINING BOARD
MEETING MINUTES
JANUARY 28, 2010**

PRESENT: Steven R. Conway, Wendy M. Henrichs, James P. Koshick, Mania Moore, Kathleen Schneider and Steven J. Silverman

STAFF: Yolanda McGowan, Bureau Director; Mike Berndt, Legal Counsel; Michelle Solem, Bureau Assistant; and other DRL Staff

CALL TO ORDER

Chair, Wendy Henrichs called the meeting to order at 8:32 a.m. A quorum of 6 members was present.

ADOPTION OF AGENDA

MOTION: Mania Moore moved, seconded by Steven Silverman, to approve the Agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES OF NOVEMBER 12, 2009

Corrections:

- Page 7, 5th line down – “subjects” not “suspects.”
- Page 6, Bottom paragraph – 1st sentence “relative to”

MOTION: Kathleen Schneider moved, seconded by Steven Silverman, to approve the Minutes of November 12, 2009 as amended. Motion carried unanimously.

PRESENTATION BY WENDY HENRICHS, BOARD CHAIRPERSON

Wendy Henrichs told the Board that she had attended the Board Chair training in December. She shared the ideas that were presented at the training. She asked the members to complete the conflict assessment tool during the break for discussion over lunch.

ADMINISTRATIVE REPORT

Yolanda McGowan conducted the annual policy review, highlighting the changes to the policies and referring members to the written policies that were included in the packet.

Ms. McGowan updated the Board on staffing changes. Marvin Robinson, Division Administrator for DOE has resigned. John Lease was introduced as the Division Administrator for Board Services and Charles Facktor will be joining the Department as Attorney Supervisor in DOE on February 1.

Board Appointments

Wendy Henrichs made the following Board appointments:

| | |
|------------------------------|---|
| Screening Committee | Mania Moore, Steven Conway and James Koshick |
| Monitoring Liaison | Steven Conway |
| Continuing Education Liaison | Wendy Henrichs in conjunction with Steven Silverman |
| Preceptor Liaison | Steven Silverman |
| Board Relations Liaison | Steven Silverman |

Secretary Jackson expressed concern about the Board Chairperson also serving as the Board Continuing Education Liaison. She noted that there have been numerous complaints related to continuing education approvals process. Steven Conway suggested that Dr. Henrichs appoint another member to the Continuing Education Liaison position. The Board has asked that the complaints be shared with the Board. Secretary Jackson asked that Dr. Henrichs consider choosing only one of the positions, Chair or Continuing Education Liaison.

After much heated discussion related to the continuing education liaison, it was decided that the Board chair person will remain both chair and continuing education liaison and both she and Dr. Silverman will receive all information related to continuing education from the department. Dr. Silverman and Dr. Henrichs will develop a more transparent plan of action relating to continuing education approvals and provide the department with the process for handling continuing education.

**PRESENTATION OF PROPOSED STIPULATIONS, FINAL DECISIONS AND
ORDERS OR ANY SIGNED AFTER MAILING OF THE AGENDA**

Attorney Jack Zweig presented the Proposed Stipulation, Final Decision and Order in the matter of Michael W. Zoelle (06 CHI 026). Deliberation will be in closed session.

Attorney Jeanette Lytle presented the Proposed Stipulation, Final Decision and Order in the matter of Keith J. Oudenhoven (09 CHI 027 and 09 CHI 038). Deliberation will be in closed session.

There was no presentation made in the matter of Brad H. Wehking (06 CHI 008). Deliberation will be in closed session.

**PRECEPTOR APPROVALS OR ANY RECEIVED
AFTER PRINTING OF AGENDA**

Dr. Silverman distributed a handout related to preceptor programs to the board. Dr. Silverman will work with Ms. McGowan to send letters to the schools that have previously approved preceptor programs stating that the Board has reviewed several preceptor programs and offer suggestions for the program as sort of a “best practices.”

Motion: Mania Moore moved, seconded by Kathleen Schneider, to direct Dr. Silverman to communicate on behalf of the board with colleges indicating best practices that could be included in their preceptor program.

The following requests for approval of preceptors have been submitted to the DRL 45 days in advance of the beginning of the school's next trimester:

| <u>School</u> | <u>Chiropractor</u> | <u>Year Lic. Granted</u> |
|--------------------------|---------------------|--------------------------|
| <u>Palmer</u> (postgrad) | Dr. Charles Heike | 12/30/1977 |
| | Dr. John Corsi | 12/14/2001 |
| | Dr. Terry Wepner | 7/16/1983 |
| | Dr. Christine Krsko | 11/17/1976 |
| | Dr. Daniel Hyatt | 02/08/1990 |

MOTION: Steven Conway moved, seconded by Kathleen Schneider, to approve the preceptors as presented. Motion carried unanimously.

MOTION: Steven Conway moved, seconded by Kathleen Schneider, to approve the preceptor and post-ceptor programs reviewed, including recommendations for best practices. Motion carried unanimously.

Discuss Need For and Create Protocol for Changing Preceptors

Dr. Henrichs indicated that the college is the entity responsible for the approval of preceptors. The Board decided that any request for preceptor change must come from the college to the Board. If there are time constraints that do not allow the item to be placed on the next agenda, the Preceptor Liaison will grant the change between meetings.

LEGISLATION/ADMINISTRATIVE RULES

None.

CREDENTIALING/EDUCATION AND EXAMINATION ISSUES

Part IV Update

Dr. Koshick reported that he attended the Part IV exam at Palmer in November as a proctor. He explained the process by which the proctors prepared for the exam. He also told the Board that this exam never took a “patient” from beginning to end. Dr. Koshick expressed his concerns regarding credibility issues of the Part IV exam, but noted that the security of the exam was excellent. Dr. Koshick indicated that it is his opinion that the Board is headed in the right direction with the practical exam under development by this Board.

Presentation of Practical Examination Format

Wendy Henrichs asked Dr. Conway about his participation in the discussion related to the practical exam. He indicated that he would have difficulty participating in any part of the exam that is not fully supported by the Department. He is concerned with personal liability related to the practical exam.

Secretary Jackson indicated that the Department is prepared to administer a practical exam but does not have the capacity to do what the Board is asking the Department to do. She asked the Board to reconsider their position as it relates to use of live subjects due to staffing, financial and liability issues.

Gail Pizarro summarized her opinion that many problems with testing with live subjects:

- Live subject examinations test a narrow range of clinical skills
- Live subject examinations create ethical dilemmas for candidates, the agency and the profession
- Live subject examinations are unable to distinguish between those who are ready to assume practice and those who are not.
- Live subject examinations are unethical and have been grounds for many lawsuits
- Live subject examinations do not comply with industry standards.

Dr. Henrichs indicated that she believes that the Board would not be adequately protecting the public if they do not require an exam that uses live subjects during the testing process. Secretary Jackson indicated that there are only two professions that use live subjects for their testing – Hearing and Speech and Barbering and Cosmetology. Jill Remy explained her opinion as to why the process and that the live subject testing is not psychometrically sound because you cannot recreate the same scenario from one examinee or examiner to the next. Dr. Koshick mentioned a study showing that a practical exam that included live subjects was more valid than one without live subjects.

Dr. Silverman told the Board that he believes that we could provide a practical exam with a new concept in a written format and still fulfill the requirements of the law.

MOTION: Steven Silverman moved, seconded by Steven Conway, to move forward with the exam in written format without the use of live subjects. Motion failed.

Gail Pizarro explained the different options for testing without the use of live subjects.

Dr. Henrichs suggested that more information needed to be obtained regarding simulated exam methods in order to vote in a manner other than the use of live subjects. Dr. Henrichs reiterated that at the November 12, 2009, meeting the Board passed a motion to require the use of live subjects during the practical exam for state licensure.

Further discussion included the Board being charged with testing for minimum competency. The Chiropractors have been tested throughout school and their internship for minimum competency. Ms. McGowan told the Board that the use of live subjects tells the public that anyone not tested

with live subjects is incompetent. Secretary Jackson indicated that while Department resources should be considered, they should not be the driving factor. The driving factor should be the validity of the test and that, based on information given to the Board by the Division of Exams, the use of live subjects is more subjective than objective.

MOTION: Mania Moore moved, seconded by Steven Silverman, to find availability of alternative methods to perform a practical examination including but not limited to computer simulation and mannequin and that the board receive the information within one month. Motion failed.

Dr. Conway suggested that the practical exam address the issues that are related to the complaints that have been received by the Department.

Jill Remy asked how the Board would like the Department to respond to requests for information related to the practical exam. Dr. Henrichs indicated that the Department would refer those asking the questions to the statute.

Discussion and Assignment of Continuing Education Program Provider Numbers

Jill Remy told the Board that this database is nearly complete and is planned to interface with the website. The Department will need time to input the data retroactive to the implementation of the legislation. She clarified that numbers are being issued to the educational program and not the provider itself.

Issuing of CT/CRT Credential

MOTION: Steven Conway moved, seconded by Mania Moore to direct the Department staff to work with the Credential Liaison to create the forms necessary for issuing the CT/CRT credentials. Motion carried unanimously.

PRACTICE QUESTIONS

Can a chiropractor prescribe low pressure hyperbaric therapy?

The Board decided that in order to answer this question, the Board would need more information related to the context of and training related to prescribing low pressure hyperbaric therapy.

Discussion related to Managed Care Organization Policies.

After some discussion, it was decided that this is not a Board issue until such a time as the Board receives a complaint. Ms. McGowan will develop a statement for the website on behalf of the Department related to licensee's responsibilities.

MISCELLANEOUS CORRESPONDENCE/INFORMATION AND PHONE INQUIRIES

None.

TRAVEL

MOTION: Kathleen Schneider moved, seconded by Mania Moore, to appoint Jim Koshick as the Board's delegate to attend the 84th annual Educational Congress of the Federation of Chiropractic Licensing Boards April 28 – May 2, 2010 in Baltimore Maryland with Steven Conway as the alternate. Motion carried unanimously.

MOTION: Jim Koshick moved, seconded by Kathleen Schneider, to delegate Yolanda McGowan as the Board's delegate to attend Association of Chiropractic Board Administrators (ACBA) Annual Meeting. Motion carried unanimously.

PUBLIC COMMENTS

None.

CLOSED SESSION

MOTION: Mania Moore moved, seconded by Kathleen Schneider, to adjourn to closed session to deliberate on cases following hearing (s. 19.85(1)(a), Stats.; consider closing disciplinary investigation with Administrative Warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.). Roll Call Vote: Wendy Henrichs – yes; James Koshick – yes; Mania Moore – yes; Steven Silverman – yes; Kathleen Schneider – yes; Steven Conway - yes. Motion carried unanimously.

Open session recessed at 1:00 p.m.

RECONVENE TO OPEN SESSION

MOTION: Kathleen Schneider moved, seconded by Steven Silverman, to reconvene in open session. Motion carried unanimously.

Open session reconvened at 1:58 p.m.

DISCUSSION REGARDING PRACTICAL EXAM

None.

VOTING ON ITEMS CONSIDERED OR DELIBERATED ON IN CLOSED SESSION

MONITORING

**JOHN ZASTROW, D.C.
REQUEST REINSTATEMENT TO FULL LICENSURE**

MOTION: Kathleen Schneider moved, seconded by Mania Moore, to deny reinstatement of full licensure for John Zastrow. Motion carried unanimously.

**DIVISION OF ENFORCEMENT – CASE CLOSINGS, CASE STATUS REPORT,
PROPOSED STIPULATIONS**

**MICHAEL W. ZOELLE
06 CHI 026**

MOTION: Steven Conway moved, seconded by Steven Silverman, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order, in the matter of Michael W. Zoelle (06 CHI 026). Motion carried unanimously.

**KEITH J. OUDENHOVEN
09 CHI 027 AND 09 CHI 038**

MOTION: Steven Conway moved, seconded by Kathleen Schneider, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order, in the matter of Keith J. Oudenhoven (09 CHI 027 and 09 CHI 038). Motion carried unanimously.

**BRAD WEHKING
06 CHI 008**

MOTION: Jim Koshick moved, seconded by Kathleen Schneider, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order, in the matter of Brad Wehking (06 CHI 008), contingent upon modification that the CE cannot be used toward the statutory requirements for renewal. Motion carried unanimously.

Deliberation of Proposed Stipulations that May be Signed after Mailing of the Agenda

None.

Deliberation of Proposed Administrative Warnings Received after Mailing of Agenda

**06 CHI 037
N.D.D.**

MOTION: James Koshick moved, seconded by Steven Silverman, to issue an Administrative Warning in the case of 06 CHI 037. N.D.D. Motion carried. Steven Conway abstained.

Deliberation of Proposed Final Decisions & Orders that May be Signed after Mailing Of the Agenda.

None.

Deliberation of Order Fixing Costs Received After the Mailing of the Agenda

None.

Deliberation of Petitions for Re-hearings Received After the Mailing of the Agenda

None.

REVIEW OF APPLICATIONS RECEIVED AFTER MAILING OF THE AGENDA

None.

DOE SIGNATURE COLLECTION

OTHER BOARD BUSINESS

None.

ADJOURNMENT

MOTION: James Koshick moved, seconded by Kathleen Schneider, to adjourn the meeting at 2:04. Motion carried unanimously.